

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 16, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD DAVID BATES (03),

Defendant.

No. 2:14-cr-00124-SMJ-3

**ORDER DENYING MOTION FOR
SENTENCE REDUCTION**

This matter comes before the Court, without oral argument, on Defendant Todd David Bates's (03) Motion for Sentence Reduction. ECF No. 935. The Government opposes Bates's motion. ECF No. 938. After review of the motions and file in this matter, as well as the controlling legal authority, the Court is fully informed and denies Bates's motion.

BACKGROUND

On September 16, 2014, a grand jury indicted Bates on charges of conspiracy to commit murder for hire of J.W., J.M., T.S., as well as conspiracy to distribute heroin. ECF No. 17. A year later, Bates pleaded guilty to conspiracy to commit murder for hire of J.M. in violation of 18 U.S.C. § 1958 and conspiracy to distribute heroin in violation of 21 U.S.C. §§ 841(a)(1), 846. ECF No. 476. In his plea

1 agreement, Bates admitted the following facts related to the planned murder of J.M.:

2 On or about February 14, 2013, Todd Bates, upon the solicitation and
3 direction of co-defendant James Henrikson, traveled from Spokane,
4 Washington, to Chicago, Illinois, to solicit an individual known as “The
5 Wiz” or “Wiz” (Marvin Martin) to murder Jed McClure. Henrikson
6 directed Bates to do so through Robert Delao. Delao passed on the order
7 to Bates by cellular telephone. Later the same month, Henrikson gave
8 Delao \$10,000 to pass on to Bates to hire “The Wiz” to murder
9 McClure. Henrikson gave an additional \$3,000 to Delao and Bates for
10 travel and lodging expenses. Henrikson gave Delao a photograph of
McClure and McClure's home address to assist in locating and
identifying McClure so that he could be murdered. Delao met Bates in
Chicago, where he passed the \$10,000 and the other items on to Bates.
Bates then personally asked “The Wiz” to kill McClure. “The Wiz”
agreed to do so for \$25,000 and accepted \$10,000 in cash as a down
payment. Shortly thereafter, “The Wiz” stopped accepting calls from
Bates and the other members of the conspiracy, effectively stealing the
\$10,000.

11 ECF No. 476 at 5–6. He also admitted the following facts related to the conspiracy
12 to distribute heroin:

13 On or about January 11, 2013, at the direction of Henrikson, the
14 Defendant, TODD BATES traveled from Spokane, Washington, to
15 Chicago, Illinois. Bates met with Henrikson and Robert Delao in
16 Chicago, where Henrikson gave Bates cash to purchase approximately
17 eight ounces of high-quality heroin, also referred to as “China White.”
18 Bates purchased the heroin, which Delao later transported to
19 Washington State. Delao gave the heroin to Henrikson. Henrikson then
20 converted the heroin into pill form using a pill press, and gave some of
the pills to Delao, Bates, and others to distribute within the Eastern
District of Washington and elsewhere. The pills proved unmarketable,
however, because they could not be crushed and smoked-the preferred
method for use among the target market.

Id. at 6.

1 The Court entered an order accepting the guilty plea and deferring the
2 acceptance of the plea agreement. ECF No. 472. It later entered an order accepting
3 the plea agreement. ECF No. 920. The Court entered its judgment, sentencing Bates
4 to 100 months incarceration on both counts to be served concurrently with each
5 other. ECF No. 921 at 2. It also imposed a 5-year term of supervised release. *Id.* at
6 3.

7 Bates now moves for a sentence reduction. ECF No. 935. On January 1, 2020,
8 Bates presented to Bureau of Prisons (“BOP”) Health Services (“clinic”) for a
9 chronic care clinical visit. ECF No. 935-6. The treatment provider assessed Bates
10 as having hypertension, hyperlipidemia, hypothyroidism, obesity, asthma, and Type
11 2 diabetes mellitus with diabetic neuropathy. ECF No. 935-6. On April 10, Bates
12 went back to the BOP clinic complaining of chills, a cough, sore throat and aches.
13 ECF No. 935-1. The treatment provider assessed him as having chronic sinusitis,
14 chronic tonsillitis, and adenoiditis. *Id.* On April 23, the BOP clinic conducted a mass
15 screening for COVID-19 and tested Bates. ECF No. 935-3. On April 30, the BOP
16 clinic received a positive COVID lab related to Bates. ECF No. 935-4. Bates
17 recovered. ECF No. 935. Still, given his chronic medical history, he argues this
18 Court should reduce his sentence because “extraordinary and compelling reasons”
19 exist. *Id.* at 18–19. He also claims he no longer poses a danger to society. *Id.* at 19.
20 BOP characterizes him as a “low risk for recidivism,” *id.* and has approved him for

1 a full year of halfway house placement; he will be transferred to that placement on
2 December 1, 2020. ECF No. 941 at 9. Despite the halfway house placement, he
3 argues his request for home detention would afford him more safety from COVID-
4 19 reinfection than in a group setting. *Id.* at 9, n. 25.

5 The Government opposes his motion. ECF No. 938. It argues Bates has failed
6 to present “extraordinary and compelling reasons” warranting a sentencing
7 reduction. *Id.* at 11–14. It also claims Bates remains a danger to society under 18
8 U.S.C. § 3142(g) and none of the 18 U.S.C. § 3553(a) factors support his immediate
9 release. *Id.* at 14–15. It finally emphasizes the victims in this case oppose his request
10 for a sentence reduction.

11 LEGAL STANDARD

12 The Court has narrow authority to amend a criminal defendant’s sentence of
13 incarceration once it has been imposed. *See* 18 U.S.C. § 3582(c) (“The court may
14 not modify a term of imprisonment once it has been imposed except” in certain
15 circumstances). The statutory mechanism under which Defendant seeks early
16 release permits a sentence reduction if the Court finds “extraordinary and
17 compelling reasons warrant” such relief. *Id.* § 3582(c)(1)(A)(i). The Court must also
18 consider the sentencing factors provided in 18 U.S.C. § 3553(a). 18 U.S.C. §
19 3582(c)(1)(A). But that provision is only available “upon motion of the Director of
20 the Bureau of Prisons, or upon motion of the defendant after the defendant has fully

1 exhausted all administrative rights to appeal a failure of the Bureau of Prisons to
2 bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of
3 such a request by the warden of the defendant's facility, whichever is earlier." *Id.* §
4 3582(c)(1)(A).

5 DISCUSSION

6 **A. Bates Has Satisfied the Administrative Exhaustion Requirement**

7 Bates submitted his compassionate release request to the Terminal Island FCI
8 warden on July 25, 2020. ECF No. 935-9. Bates apparently did not receive a
9 response. More than thirty days have elapsed since the receipt of Bates's written
10 request to the warden. *See id.* The Government does not dispute that Bates
11 exhausted his administrative remedies. *See generally* ECF No. 935. The Court thus
12 finds Bates has met the administrative exhaustion requirement. *See* 18 U.S.C. §
13 3582(c)(1)(A)(i).

14 **B. Bates Has Not Shown Extraordinary and Compelling Reasons Warranting Release**

15 To begin with, the Court finds Bates has failed to establish "extraordinary
16 and compelling reasons" warranting a reduction in his sentence. While Bates
17 highlights that he might be at a higher risk for serious illness if he contracts COVID-
18 19, the Court does not find that Bates suffers from any "extraordinary" medical
19 conditions under 18 U.S.C. § 3582(c)(1)(A)(i). Moreover, Bates conspired to kill
20 three people and conspired to distribute heroin. ECF No. 476 at 5–6. Despite his

1 efforts toward rehabilitation, the Court finds that the sentencing factors do not
2 weigh in favor of his early release.

3 **1. COVID-19 Presents A Serious, But Not Extraordinary, Risk To Bates**

4 Bates has hypertension, hyperlipidemia, hypothyroidism, obesity, asthma,
5 and Type 2 diabetes mellitus with diabetic neuropathy. ECF No. 935-6. The
6 Centers for Disease Control and Prevention (“CDC”) reports that people with
7 obesity face an increased risk of suffering from severe illness if they contract
8 COVID-19. *See People with Certain Medical Conditions*, Centers for Disease
9 Control and Prevention, [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html)
10 [precautions/people-with-medical-conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html) (last visited Nov. 13, 2020)
11 (“cardiovascular or cerebrovascular disease, such as hypertension (high blood
12 pressure) or stroke, might increase your risk of severe illness from COVID-19.”).
13 Type 2 diabetes also increases the risk of severe illness from COVID-19. *Id.*
14 Moderate-to-severe asthma might increase the risk for severe illness from COVID-
15 19. *Id.* It remains unclear whether hyperlipidemia and hypothyroidism increase the
16 risk for severe illness. *See id.*

17 Bates is currently housed at Terminal Island FCI with a projected release date
18 of December 3, 2021. *See Find an Inmate*, Federal Bureau of Prisons,
19 <https://www.bop.gov/inmateloc/> (last visited Nov. 13, 2020). Terminal Island FCI
20 reportedly has no active inmate or staff COVID-19 cases yet reports 567 inmates

1 have recovered from COVID, and 10 inmates have died as a result of the disease.
2 *See COVID-19 Cases*, Federal Bureau of Prisons <https://www.bop.gov/coronavirus>
3 (last visited Nov. 13, 2020). Despite these low numbers at present, Bates has already
4 been infected and recovered. *See* ECF No. 935, 935-4.

5 While Bates’s medical conditions will likely increase his risk for severe
6 illness, he fails to show any “extraordinary” diagnoses that warrant a reduction in
7 sentence. Bates remains able to adequately manage his health conditions while
8 incarcerated—and infected—so the Court finds his situation falls short of the
9 “extraordinary and compelling” standard required under 18 U.S.C. § 3582(c).

10 **2. Bates Still Poses A Danger to Society**

11 Bates was arrested on September 17, 2014 and has served almost 74 months
12 (a little over six years) of his 100-month sentence. *See* ECF No. 839. His expected
13 release date is December 3, 2021. *See Find an Inmate, supra*.

14 In his presentence investigation report, Bates had a Total Offense Level of
15 34 and a Criminal History Score of 8; he also fell into Criminal History Category
16 IV and Zone D of the sentencing guidelines. As noted in the presentence report,
17 Bates has a lengthy history of criminal behavior, including convictions for refusal
18 to cooperate (1995), theft (1995), possession of stolen property (1994), disorderly
19 conduct (1994 and 2010), taking a motor vehicle without permission (1995), open
20 container (1996), third degree driving while license suspended (1995, 1996, 2003),

1 third degree negligent driving (1995), dog exhibiting vicious behavior (1996),
2 fourth degree assault (1996 and 1999), first degree trespassing (2003),
3 assault/domestic violence (2004), second degree theft (2006), delivery of cocaine
4 (two counts in 2007), possession of cocaine (2007), and assault (2006). In addition
5 to his above-listed convictions, Bates has several other arrests for which he was not
6 subsequently convicted. Those arrests include no less than five instances of assault
7 and two instances of violating a protection order, in addition to a robbery and
8 several other matters.

9 While the Court commends Bates for his good behavior during his term of
10 incarceration, that does not erase the serious nature of his crimes. Bates allegedly
11 conspired to kill three people, though he pleaded guilty only to conspiracy to
12 commit murder for hire of J.M. ECF No. 476 at 5–6. He also conspired to distribute
13 a significant amount of heroin. *Id.* Though one goal of our criminal justice system
14 is rehabilitation, another purpose is retribution. The Court finds it would be unjust
15 to the victims of these crimes to grant Bates request for a sentence reduction.

16 **3. The 3553-Factors Do Not Favor Release**

17 Along with the kinds of sentences available and the sentencing range
18 established by the guidelines, § 3553(a) also instructs the Court to consider:

19 (2) the need for the sentence imposed--

20 (A) to reflect the seriousness of the offense, to promote respect
for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

1 (C) to protect the public from further crimes of the defendant;
and
2 (D) to provide the defendant with needed educational or
vocational training, medical care, or other correctional treatment
3 in the most effective manner.

4 18 U.S.C. § 3553(a)(2).

5 It appears BOP has determined to release Bates to a halfway house. ECF No.
6 941 at 9. The Court will not comment on the wisdom of that decision, but it appears
7 that Bates's early release to a halfway house reflects his good behavior in prison.
8 Even so, despite the increased risk posed by the pandemic, given Bates's lengthy
9 criminal history, and the serious nature of his crimes in this matter, the Court
10 determines it must protect the public from further crimes. So, it will not release
11 Bates to home detention. The Court anticipates transfer to the halfway house will
12 help Bates better reintegrate into society.

13 CONCLUSION

14 The Court finds that Bates has not established "extraordinary and compelling
15 reasons" to justify his release, nor has he shown that the sentencing criteria favor a
16 sentence reduction. Although Bates has an increased risk of serious illness if he
17 contracts COVID-19 a second time, that alone does not suffice to grant his motion
18 for a sentence reduction. The Court finds that any reduction in his sentence would
19 not reflect the serious nature of his crimes nor provide adequate retribution for the
20 victims. It appears BOP will transfer Bates to a halfway house, and the Court is

1 hopeful that living arrangement will help Bates reintegrate into society and
2 reinforce the fundamentals of becoming a law-abiding, productive citizen. Bates's
3 motion is denied.

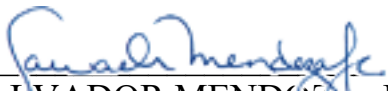
4 Accordingly, **IT IS HEREBY ORDERED:**

5 Defendant Todd David Bates's (03) Motion for Sentencing Reduction,

6 **ECF No. 935, is DENIED.**

7 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
8 provide copies to all counsel, the U.S. Probation Office, and the Bureau of Prisons.

9 **DATED** this 16th day of November 2020.

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11 
12 SALVADOR MENDOZA, JR.
13 United States District Judge
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